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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

FAIR POLITICAL PRACTICES COMMISSION,)	Case No. 104CV024425
a state agency,)	
)	
Plaintiff,)	STIPULATION FOR ENTRY OF
)	JUDGMENT
v.)	
)	(IN FAVOR OF PLAINTIFF AGAINST
COMMITTEE FOR CLEAN SAFE CREEKS,)	DEFENDANTS)
SUSAN A. PINO, AND RICK L. CALLENDER,)	
)	UNLIMITED CIVIL ACTION
Defendants.)	
)	
)	

Plaintiff Fair Political Practices Commission, a state agency, by its attorneys, and Defendants Committee for Clean Safe Creeks, Susan A. Pino, and Rick L. Callender enter into this stipulation to resolve all factual and legal issues pertaining to the complaint for civil penalties filed herewith.

It is stipulated by and between the parties as follows:

The complaint on file in this action was properly filed and served on Defendants Committee for Clean Safe Creeks (the "Committee"), Susan A. Pino ("Pino"), and Rick L. Callender ("Callender").

Jurisdiction of the subject matter and of the parties to this action and venue are properly in Santa Clara County Superior Court. The complaint states four causes of action against Defendants Committee, Pino, and Callender, and any defects in the complaint are expressly waived.

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1 The Court will enter judgment in this action, pursuant to the stipulation, on request of Plaintiff
2 Fair Political Practices Commission (the "FPPC") without notice to Defendants Committee, Pino, and
3 Callender.

4 Plaintiff FPPC and Defendants Committee, Pino, and Callender agree to enter into this
5 stipulation to resolve all factual and legal issues raised in this matter, and to reach a final disposition
6 with respect to Defendants, without the necessity of holding a civil trial to determine their liability.

7 Defendants Committee, Pino, and Callender understand, and hereby knowingly and voluntarily
8 waive, any and all procedural rights that they could have exercised if this stipulation had not been
9 entered into, including, but not limited to, their right to civil discovery, to appear personally at any civil
10 trial held in this matter, to confront and cross-examine witnesses, and to have the trial presided over by
11 an impartial judge, and heard and decided by a jury.

12
13 **ENTRY OF JUDGMENT**

14 For the violations of the Political Reform Act admitted herein, Plaintiff FPPC and Defendants
15 Committee, Pino, and Callender stipulate that a final judgment be issued and entered in the form of the
16 order attached hereto and made a part hereof as Exhibit "A," against Defendants Committee, Pino, and
17 Callender, and in favor of Plaintiff FPPC, for a monetary penalty of Twenty-Four Thousand Dollars
18 (\$24,000). Payment of this amount shall be made by cashier's checks, payable to the "General Fund of
19 the State of California," as follows: payment in the amount of Twelve Thousand Dollars (\$12,000) shall
20 be made upon the execution of this stipulation; and payment of the balance of the monetary penalty, in
21 the amount of Twelve Thousand Dollars (\$12,000), shall be made by August 31, 2004. The parties shall
22 each bear their own attorney's fees and costs. If, for any reason, the payment of the monetary penalty is
23 not satisfied and paid in full on August 31, 2004, as agreed hereto, Defendants Committee, Pino, and
24 Callender will pay interest on the unpaid judgment at the legal rate, commencing from the date of the
25 missed payment, and will be liable for reasonable attorney fees and all other costs of collection.

26 The final judgment may be signed by any judge of the Superior Court of the State of California,
27 in and for the County of Santa Clara, and entered by any clerk upon application of any party without
28 notice.

Defendants Committee, Pino, and Callender further stipulate and agree to pay any court-appearance fees required for the filing of this civil stipulation.

STIPULATED STATEMENT OF LAW AND FACTS

1. THE PARTIES AND BACKGROUND INFORMATION

Plaintiff FPPC is a state agency created by the Political Reform Act of 1974 (the "Act"). (Gov. Code §§ 81000 - 91014.) Plaintiff FPPC has primary responsibility for the impartial, effective administration and implementation of the Act. (Gov. Code § 83111.) Pursuant to Government Code section 91001, subdivision (b), Plaintiff FPPC is the civil prosecutor for matters involving state election campaigns. Additionally, Plaintiff FPPC may act as the civil prosecutor for matters involving local election campaigns, pursuant to Government Code section 91001, subdivision (b), upon written authorization from the district attorney of the jurisdiction in which the election occurred. Plaintiff FPPC received written authorization from the District Attorney of Santa Clara County to bring and resolve this civil action against Defendants Committee, Pino, and Callender, by letter dated April 13, 2004, and is authorized to maintain this action under Government Code sections 91001, subdivision (b), 91004, 91005, and 91005.5.

Defendant Committee was, at all times relevant to this matter, a recipient committee as defined in Government Code section 82013, subdivision (a).

Defendant Pino, a retired administrative manager of the Santa Clara Valley Water District, was, at all times relevant to this matter, the treasurer of Defendant Committee.

Defendant Callender, the Local Government Affairs Manager of the Santa Clara Valley Water District, was, at all times relevant to this matter, the assistant treasurer and campaign manager of Defendant Committee.

2. SUMMARY OF THE CAMPAIGN REPORTING LAWS

An express purpose of the Act, as set forth in Government Code section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper practices may be

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1 inhibited. In furtherance of this purpose of disclosure, the Act sets forth a comprehensive campaign
2 reporting system. (Gov. Code § 84200, et seq.)

3 Duty to File Campaign Statements

4 Government Code section 82013, subdivision (a) defines a “committee” as any person or
5 combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a
6 calendar year. This type of committee is commonly referred to as a “recipient” committee. Under
7 Government Code section 82047.5, subdivision (b), a recipient committee that is formed or exists
8 primarily to support or oppose a single measure is a “primarily formed committee.” The term
9 “measure” is defined in Government Code section 82043 to mean any constitutional amendment or other
10 proposition which is submitted to a popular vote at an election by action of a legislative body.

11 Any person or persons who constitute a committee, pursuant to Government Code section 82013,
12 subdivision (a), is required to file periodic campaign statements and reports disclosing the financial
13 activity of the recipient committee, as required under the Act.

14 Duty to File a Statement of Organization

15 Government Code section 84101, subdivision (a) requires a recipient committee to file a
16 statement of organization within ten days of qualifying as a committee. When a recipient committee is
17 also formed primarily to support or oppose a single measure, the ten-day filing period begins to run
18 when the constitutional amendment or other proposition is placed on the ballot by a legislative body.

19 Whenever there is a change in any of the information in a statement of organization, Government
20 Code section 84103, subdivision (a) requires a recipient committee to file an amendment, within ten
21 days, to reflect the change.

22 Under Government Code sections 84101 and 84103, and Government Code section 84215,
23 subdivision (d), the original statement of organization and any amendments to the statement of
24 organization must be filed with the Secretary of State and a copy must be filed with the local filing
25 officer with whom the committee is required to file the originals of its campaign reports pursuant to
26 Government Code section 84215. When the recipient committee is also a committee formed or existing
27 primarily to support or oppose local measures to be voted upon in any number of jurisdictions within
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one county, Government Code section 84215, subdivision (d) provides that the local filing officer is the clerk of the county.

Under Government Code section 84102, subdivision (d), a recipient committee is required to provide, in a statement of organization, the title and ballot number, if any, of any measure, which the committee supports or opposes as its primary activity.

Duty to File Pre-Election Campaign Statements

Government Code section 84200.5 requires a committee primarily formed to support a ballot measure to file two pre-election campaign statements, disclosing contributions received and expenditures made before any election in which the committee is engaged in campaign activity. Under Government Code section 84200.7, subdivision (b), the first pre-election campaign statement prior to a November election held in an even-numbered year must cover activity through September 30, and be filed by October 5. Under the same section and subdivision, the second pre-election campaign statement prior to a November election held in an even-numbered year must cover activity through the 17 days prior to the election, and must be filed by 12 days prior to the election.

Government Code section 84215, subdivision (d) provides that a recipient committee that is formed or existing primarily to support or oppose local measures to be voted upon in any number of jurisdictions within one county, shall file its pre-election campaign statements with the clerk of the county.

Duty to File Late Contribution Reports

Under Government Code section 84203, subdivision (a), when a recipient committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report that must be filed within 24 hours of receiving the late contribution. Under this section, and Government Code section 84215, subdivision (d), when the recipient committee is also a committee formed or existing primarily to support or oppose local measures to be voted upon in any number of jurisdictions within one county, the committee must file the late contribution report with the clerk of the county.

Government Code section 82036 defines a “late contribution” as a contribution aggregating \$1,000 or more that is received before an election, but after the closing date of the last pre-election

campaign statement that is required to be filed. Under Government Code sections 82036 and 84200.7, the late contribution reporting period prior to an election is the last 16 days before the election.

Duty to Report Payments Made to Subvendors

Government Code section 84211, subdivision (j), as it existed in October 2000, required the disclosure of specific information for all expenditures of \$100 or more made during the period covered by a campaign statement, including the name and street address of the person to whom the expenditure had been made, the amount of the expenditure, and a brief description of the consideration that was received for the expenditure.

Government Code section 84303, as it existed in October 2000, provided that no expenditure shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the benefit of, any committee, unless it is reported by the committee as if the expenditure was made directly by the committee. Persons to whom expenditures are made through an agent or independent contractor on behalf of a committee are commonly referred to as “subvendors.”

3. CIVIL LIABILITY PROVISIONS

Government Code section 91004 provides that any person who intentionally or negligently violates any of the reporting requirements of the Act shall be liable in a civil action in an amount up to the amount(s) not properly reported. Persons that violate Government Code sections 84200.5, 84211, 84203, and 84303 are liable in a civil action brought pursuant to Government Code section 91004.

Government Code section 91005.5, as it existed in 2000, provided that any person who violates any provisions of the Act for which no specific civil penalty is provided, shall be liable in a civil action for an amount up to two thousand dollars (\$2,000) per violation. Persons who violate Government Code section 84103 are liable in a civil action pursuant to Government Code section 91005.5.

Pursuant to Government Code sections 81004, subdivision (b) and 84100, and California Code of Regulations, title 2, section 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

(Gov. Code § 91006.) Pursuant to title 2, California Code of Regulations, section 18426.1, with respect to any statements signed by the assistant treasurer, the assistant treasurer shall be jointly liable, along with the treasurer and the committee, for any reporting violations committed by the committee for which the treasurer would be liable.

4. SUMMARY OF THE FACTS

Between July 1, 2000 and December 31, 2000, Defendants Committee, Pino, and Callender raised and spent approximately \$260,000 to support the passage of Measure B in the November 7, 2000 general election. Of that amount, \$190,995, or approximately 75% of the total contributions of Defendant Committee was not disclosed before the election. Measure B passed, receiving 66.9% of the votes cast, with 66.6% needed.

As a recipient committee, Defendant Committee, and its treasurers, Defendants Pino and Callender, had a duty to comply with the campaign reporting provisions of the Act, including the duty to file: amended statements of organization within ten days of a change in the primary activity of Defendant Committee, as required by section 84103, subdivision (a); pre-election campaign statements, as required by Government Code section 84200.5, subdivision (b); and late contribution reports, as required by Government Code section 84203, subdivision (a). Furthermore, Defendant Committee, Pino, and Callender, had a duty to report subvendor information, as required by Government Code sections 84211, subdivision (j)(6) and 84303.

A. FIRST CAUSE OF ACTION

Defendant Committee qualified as a recipient committee, on or about April 28, 2000, by receiving a contribution in the amount of \$1,000 from Kay Whitlock, who was, at all times relevant to this matter, the Assistant General Manager for External Affairs of the Santa Clara Valley Water District.

Defendants Pino and Callender established Defendant Committee, on July 10, 2000, by filing a statement of organization with the Santa Clara County Registrar of Voters. This initial statement of organization stated that Defendant Committee was a recipient committee, but did not specify the type of recipient committee Defendant Committee was, or contain a description of its primary political activity.

Defendants Pino and Callender then filed an amendment to the initial statement of organization with the Secretary of State and Santa Clara County Registrar of Voters, also on July 10, 2000, declaring

1 that Defendant Committee was a general purpose committee whose purpose was to support ballot
2 initiatives relative to flood protection and environmental enhancement.

3 On July 25, 2000, the Santa Clara Valley Water District voted to place the “Clean, Safe Creeks
4 and Natural Flood Protection Plan,” on the November 7, 2000 ballot. On August 11, 2000, the ballot
5 measure was designated as Measure B by the Santa Clara County Clerk.

6 The primary activity of Defendant Committee, from the date the Clean, Safe Creeks and Natural
7 Flood Protection Plan became a ballot measure, on July 25, 2000, through the post-election period
8 ending on December 31, 2000, was to support the passage of Measure B in the November 7, 2000
9 election.

10 Within ten days of July 25, 2000, Defendants Committee, Pino, and Callender were required,
11 under Government Code section 84103, subdivision (a), to file an amended statement of organization, to
12 disclose that Defendant Committee was a “primarily formed committee,” whose primary activity was to
13 support the passage of a measure known as the Clean, Safe Creeks and Natural Flood Protection Plan,
14 on the ballot in Santa Clara County, in the November 7, 2000 election.

15 Defendants Committee, Pino, and Callender failed to file the required amended statement of
16 organization with the Secretary of State and Santa Clara County Registrar of Voters within ten days of
17 July 25, 2000, to disclose a change in the primary activity of the committee.

18 By intentionally or negligently failing to file an amended statement of organization within ten
19 days of a change in the primary activity of Defendant Committee, Defendants Committee, Pino, and
20 Callender violated Government Code section 84103, subdivision (a).

21 B. SECOND CAUSE OF ACTION

22 As a recipient committee primarily formed to support the passage of a local ballot measure,
23 Defendant Committee, and its treasurers, Defendants Pino and Callender, were required, under
24 Government Code sections 84200.5, subdivision (b), to file a second pre-election campaign statement by
25 October 26, 2000, disclosing the contribution and expenditure activity of Defendant Committee during
26 the second pre-election reporting period of October 1, 2000 through October 21, 2000.

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1 Defendants Committee, Pino, and Callender failed to file with the Santa Clara County Registrar
2 of Voters the required pre-election campaign statement, for the reporting period October 1, 2000 through
3 October 21, 2000, by the October 26, 2000 due date.

4 Defendants Committee, Pino, and Callender did not file the pre-election campaign statement that
5 was due by October 26, 2000 until December 26, 2000, after the November 7, 2000 election in which
6 Measure B appeared on the ballot.

7 The pre-election campaign statement filed on December 26, 2000 revealed that during this
8 second pre-election reporting period, Defendants received approximately twenty-nine (29) contributions
9 totaling \$170,995, two-thirds of the total contributions of Defendant Committee, and made total
10 expenditures of approximately \$65,668.

11 The pre-election campaign statement filed on December 26, 2000 also revealed that during this
12 second pre-election reporting period, Defendants received six contributions of \$10,000 or more from the
13 following persons: Coyote Valley Research, LLC, \$50,000; Applied Materials, Inc., \$25,000; Cisco
14 Systems, Inc., \$25,000; Cargill, Inc., \$15,000; CDM, \$15,000; and URS Greiner Woodward Clyde,
15 \$10,000.

16 By intentionally or negligently failing to file a second pre-election campaign statement by
17 October 26, 2000, disclosing \$170,995 in contributions and \$65,668 in expenditures, Defendants
18 Committee, Pino, and Callender violated Government Code sections 84200.5, subdivision (b).

19 C. THIRD CAUSE OF ACTION

20 As a recipient committee, Defendant Committee, and its treasurers, Defendants Pino and
21 Callender, had a duty to file late contribution reports, disclosing, within 24 hours, any late contributions
22 that they received. In this matter, the late contribution reporting period for the November 7, 2000
23 general election was October 22, 2000 through November 6, 2000.

24 Defendants received five late contributions, totaling \$20,000, in support of Measure B, during
25 the late contribution reporting period before the November 7, 2000 election, but failed to file late
26 contribution reports with the Santa Clara County Registrar of Voters, disclosing, within 24 hours, those
27 late contributions.

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The late contributions, and the dates by which they should have been disclosed in properly filed late contribution reports, are set forth below:

	Contributor	Amount of Contribution	Date Received	Date Due
1	New Cities Development	\$10,000	10/27/2000	10/28/2000
2	LFR Inc.	\$ 1,000	10/28/2000	10/29/2000
3	Malcolm Pirnie, Inc.	\$ 1,500	11/06/2000	11/07/2000
4	Calpine & Bechtel Joint Development	\$ 2,500	11/06/2000	11/07/2000
5	Shapell Industries of No. CA	\$ 5,000	11/06/2000	11/07/2000

By intentionally or negligently failing to disclose \$20,000 in late contributions received, as set forth above, in properly filed late contribution reports, within 24 hours, Defendants Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

D. FOURTH CAUSE OF ACTION

As a recipient committee, Defendant Committee, and its treasurers, Defendants Pino and Callender, had a duty to report on their campaign statements, specified information regarding payments of \$100 or more that were made on their behalf to subvendors for campaign mailings and other campaign services.

On October 11, 2000, Defendants Committee, Pino, and Callender made a \$56,193 payment to their political consultant, Terris, Jaye & Barnes, which, in turn, used the payment to make approximately \$49,795 in expenditures to various subvendors for the design and printing of 300,000 brochures and the mailing of 50,000 of those brochures on Defendants' behalf. This payment to Terris, Jaye & Barnes represented approximately 20% of the total expenditures of Defendant Committee.

Defendants Committee, Pino, and Callender were required to report the name and street address of each subvendor, the amount of the expenditures made to each subvendor, and a brief description of the consideration that was received for each of the expenditures, on their second pre-election campaign statement, covering the reporting period October 1, 2000 through October 21, 2000. The second pre-election campaign statement filed with the Santa Clara County Registrar of Voters on December 26,

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2000, for the reporting period October 1, 2000 through October 21, 2000, did not report any itemized information regarding subvendor payments.

By intentionally or negligently failing to report \$49,795 in expenditures made to sub-vendors in the second pre-election campaign statement, filed on December 26, 2000, for the reporting period October 1, 2000 through October 21, 2000, Defendants Committee, Pino, and Callender violated Government Code sections 84211, subdivision (j)(6), and 84303.

CONCLUSION

Judgment shall be entered against Defendants Committee for Clean Safe Creeks, Susan A. Pino, and Rick L. Callender, and in favor of Plaintiff Fair Political Practices Commission, in the amount of Twenty-Four Thousand Dollars (\$24,000).

IT IS SO STIPULATED:

Dated: _____

Rick L. Callender, individually and on behalf of Committee
for Clean Safe Creeks, Defendants

Dated: _____

Susan A. Pino, Defendant

Dated: _____

Fair Political Practices Commission, Plaintiff

By: _____
Mark Krausse, Executive Director

Dated: _____

Deanne Canar, Attorney for Plaintiff
Fair Political Practices Commission